

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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IN THE MATTER OF THE PETITION OF INDIANA )  
BELL TELEPHONE COMPANY, INCORPORATED, )  
D/B/A AMERITECH INDIANA PURSUANT TO )  
I.C. 8-1-2-61 FOR A THREE-PHASE PROCESS )  
FOR COMMISSION REVIEW OF VARIOUS )  
SUBMISSIONS OF AMERITECH INDIANA TO )  
SHOW COMPLIANCE WITH SECTION 271(C) OF )  
THE TELECOMMUNICATIONS ACT OF 1996 )

CAUSE NO. 41657

PROCESS ORDER

APPROVED: OCT 3 1 2002

BY THE COMMISSION:

Camie J. Swanson-Hull, Commissioner

Abby R. Gray, Administrative Law Judge

On February 2, 2000, Indiana Bell Telephone Company, Inc. d/b/a Ameritech Indiana filed the above-captioned application to provide intrastate, interLATA telecommunications services in the state of Indiana.<sup>1</sup> This is a proceeding under Section 271 of the Telecommunications Act of 1996 ("TA-96") and section 8-1-2-61 [IC 8-1-2-61] of the Indiana Code, to evaluate whether Ameritech Indiana should be allowed to offer the requested services. Section 271 sets the criteria and process by which a Regional Bell Operating Company ("BOC") such as Ameritech Indiana will be allowed to offer in-region, interLATA services. Ameritech Indiana seeks interLATA entry under 47 U.S.C. Section 271(c)(1)(A), or "Track A" of Section 271. Track A approval requires the BOC to show the following: that it has entered into an interconnection agreement with a facilities-based competitor; that it meets the 14-point competitive checklist in Section 271(c)(2)(B); that it will enter the interLATA market consistent with the terms of Section 272; and that entry is "consistent with the public interest, convenience and necessity."<sup>2</sup> Ameritech Indiana's application requests the IURC to utilize the following three-phase approach: approve a regional independent third-party test of Ameritech's operations support system ("OSS") and appropriate performance measures (Phase 1); review checklist compliance, including a "draft application", generic interconnection agreement and performance assurance plan (Phase 2); and review final OSS test report and actual performance results (Phase 3). The first phase of this docket addresses the development of OSS performance measures, benchmarks, related business rules and addresses how the

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<sup>1</sup> Cause No. 41657, In the Matter of the Petition of Indiana Bell Telephone Company, Incorporated d/b/a Ameritech Indiana Pursuant to I.C. 8-1-2-61 For a Three Phase Process for Commission Review of Various Submission of Ameritech Indiana to Show Compliance with Section 271(c) of the Telecommunications Act of 1996. (February 2, 2000).

<sup>2</sup> Application of Ameritech Michigan Pursuant to Section 271 of the Telecommunications Act of 1934, as amended, To Provide In-Region Inter-LATA Services in Michigan, CC Docket No. 97-137 (FCC 97-298, Paras. 8, 9 (Aug. 19, 1997) (Ameritech Michigan 271 Order).

OSS performance testing should proceed. The authorization to begin the test was contained in an Order issued in this Cause on March 19, 2001. The test is ongoing.

On September 26, 2002, Ameritech Indiana filed its Phase 2 Checklist Informational Filing. The Commission held an Attorneys' conference on October 17, 2002 at which the parties stated their positions on how this phase of the case should proceed. On October 28, 2002, Ameritech Indiana filed a Submission of Additional Information Relevant to Matters Discussed at the October 17, 2002 Attorneys' Conference. On October 29, 2002, Indiana CLECs filed their Response to Ameritech Indiana's Submission of Additional Information.

The Commission, being sufficiently advised in the premises and based upon the law, now finds as follows:

**1. Jurisdiction.** Due to the unique nature of this proceeding, it is appropriate to describe the Commission's role in determining whether Ameritech Indiana has complied with the market-opening requirements contained in Section 271(c) of TA-96.

a. Authority of the Commission. The purpose of this Cause is to investigate and determine whether Ameritech Indiana's OSS for wholesale transactions with CLECs operate without discriminatory impact upon the CLECs and provide access to Ameritech Indiana's network. It is important to note that the IURC does not have ultimate decision-making authority concerning whether Ameritech Indiana may provide interLATA services in this state. This responsibility ultimately rests with the Federal Communications Commission ("FCC"). The IURC's role in this proceeding is largely determined by Section 271(d)(2)(b), which requires the FCC to consult with the relevant state commission to verify whether the BOC has one or more approved interconnection agreements with a facilities-based competitor, or a statement of generally available terms and conditions ("SGAT"), and that either the agreements or the SGAT satisfy the 14-point competitive checklist outlined in Section 271(c)(2)(B). As stated in the Ameritech Michigan 271 Order, the FCC has discretion in each 271 proceeding to determine the amount of weight to accord to the state commission's verification of the BOC's compliance with Section 271.<sup>3</sup>

Through its orders concerning past 271 applications, the FCC has effectively developed a significant role for the state commissions in this type of proceeding. Specifically, the state commissions have been delegated an essential role as the creator of the initial record upon which the FCC's review of a BOC's compliance with the Section 271 checklist will be based. Furthermore, "where the state has conducted an exhaustive and rigorous investigation into the BOC's compliance with the checklist, we [the FCC] may give evidence submitted by the state commission substantial weight in making our

<sup>3</sup> *Id.* Para. 30.

decision.”<sup>4</sup> With respect to performance assurance plans, the FCC has stated “the existence of a satisfactory performance monitoring and enforcement mechanism is probative evidence that the BOC will continue to meet its 271 obligations after a grant of such authority.”<sup>5</sup>

It is obvious that the IURC’s investigation into Ameritech Indiana’s compliance with Section 271 of TA-96 is not a traditional proceeding, but rather an implementation of Federal law as contemplated in Indiana Law. Indiana Code 8-1-1-3 provides “the Commission shall formulate rules necessary or appropriate to carry out the provisions of the chapter, and shall perform the duties imposed by law upon them [sic].” In I.C. 8-1-1-15, the Legislature specifically recognized that the Commission may promulgate rules necessary to “implement a state or federal statute, rule or regulation.” The Commission Order as a result of this docket will not be a final action but a recommendation to the FCC. The IURC’s record and evaluation will be reviewed by the FCC; the FCC may give the IURC’s record and recommendation in this proceeding whatever deference the FCC deems appropriate. Further, the petition was filed by Ameritech Indiana pursuant to I.C. 8-1-2-61 and Section 271(c) of TA-96.

Ameritech Indiana also suggested in its Petition that the Commission could invoke its general investigative powers under IC 8-1-2-58.<sup>6</sup> This is a reasonable suggestion; the Commission has the authority under IC 8-1-2-58 to investigate “any matters relating to any public utility” “for any reason”, “with or without notice”. This authority clearly extends to matters pertaining to local exchange competition; SBC/Ameritech’s internal operations, policies, and procedures; and to Ameritech Indiana’s behavior toward its competitors and customers.

In summary, based on the applicable provisions of TA-96, FCC 271 Orders, federal case law, and applicable Indiana law, the Commission concludes that it has broad authority and discretion to: (1) participate in the Ameritech Indiana Section 271 application analysis and review process; (2) investigate relevant matters pertaining to local exchange competition, and certain SBC/Ameritech OSS and other systems, operations, policies, procedures, and documentation; (3) investigate Ameritech Indiana’s behavior toward its competitors and customers; and (4) issue any orders or docket entries necessary in the course of its investigation, analysis, and review.

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<sup>4</sup> Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Services in the State of New York, CC Docket 99-295 (FCC 99-404, released December 22, 1999), Para. 51 (“Bell Atlantic New York 271 Order”)

<sup>5</sup> Joint Application by BellSouth Corporation, BellSouth Communications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA services in Georgia and Louisiana, CC Docket 02-35 (FCC 02-147, released May 15, 2002), Para. 291. [*additional cites omitted*] (“BellSouth Georgia/Louisiana 271 Order”).

<sup>6</sup> Cause No. 41657, Petition of Ameritech Indiana (Exhibit A, “Notice of Intent to File a § 271 Application at the Federal Communications Commission” Executive Summary at 3) (filed Feb 7 2000)

b. Role of the Commission. The Telecommunications Act of 1996 states, as follows:

On and after the date of enactment of the Telecommunications Act of 1996 [“TA-96”], a Bell operating company or its affiliate may apply to the [FCC] for authorization to provide interLATA services originating in any in-region State. The application shall identify each State for which the authorization is sought. TA-96, sec. 271(d)(1) (codified as amended at 47 U.S.C. § 271(d)(1)).

Not later than 90 days after receiving an application under [Section 271(d)(1), the [FCC] shall issue a written determination approving or denying the authorization requested in the application for each State. The [FCC] shall not approve the authorization requested in an application submitted under [Section 271(d)(1)] unless it finds that [certain specified conditions are met].TA-96, sec. 271(d)(3) (codified as amended at 47 U.S.C. § 271(d)(3)).

Before making any determination under [Section 271], the [FCC] shall consult with the State commission of any State that is the subject of the application in order to verify the compliance of the Bell operating company with the requirements of subsection (c) of this section.<sup>7</sup> TA-96, sec. 271(d)(2)(B) (codified as amended at 47 U.S.C. § 271(d)(2)(B)) [emphasis added].

As previously stated, the FCC has effectively developed a significant role for the state commissions in this type of proceeding. Specifically, the state commissions have been delegated an essential role as the creator of the initial record upon which the FCC’s review of a BOC’s compliance with the Section 271 checklist will be based. Furthermore, “where the state has conducted an exhaustive and rigorous investigation into the BOC’s compliance with the checklist, we [the FCC] may give evidence submitted by the state commission substantial weight in making our decision.”<sup>8</sup>

Congress did not impose any specific requirements or restrictions on how either the FCC or the States were to treat this mandatory consultation. Nevertheless, the FCC has taken steps to flesh out this consultative role; the IURC will serve as the creator of the initial record upon which the FCC will base its review of Ameritech Indiana’s compliance with the Section 271 checklist and the nature and extent of competition it faces in relevant product, service, and geographic markets.<sup>9</sup> The role of “record-maker” was first delegated to the state commissions in 1997:

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<sup>7</sup> The FCC is also required to consult with the U.S. Department of Justice. 47 U.S.C. 271(d)(2)(A).

<sup>8</sup> *Bell Atlantic New York 271 Order*, Para. 51.

<sup>9</sup> *Bell Atlantic New York 271 Order*, Paras. 51 & 54.

[S]tate commissions must conduct proceedings to develop a comprehensive factual record concerning BOC compliance with the requirements of section 271 and the status of local competition in advance of the filing of section 271 applications [with the FCC]. *Ameritech Michigan 271 Order*, Para. 30.

While the federal Act does not specify the method by which the state commission is to develop its recommendation on the BOC's compliance with Section 271, it appears that the FCC does expect the state commission to conduct some type of investigation and to develop a factual predicate for the state's recommendation: "We will look to the state to resolve factual disputes wherever possible. Indeed, we view the state's and the Department of Justice's role to be one similar to that of an 'expert witness in the application process.'"<sup>10</sup>

Each Section 271 application involves complex and detailed issues. A state commission acting as an expert witness can provide the FCC with a more detailed evaluation of the specific BOC and state in question than the FCC would be able to generate independently:

Given the 90-day statutory deadline to reach a decision on a 271 application, the [FCC] does not have the time or the resources to resolve the enormous number of factual disputes that inevitably arise from the technical details and data involved in such a complex endeavor. Accordingly... where the state has conducted an exhaustive and rigorous investigation into the BOC's compliance with the checklist, we may [elect to] give evidence submitted by the state commission substantial weight in making our decision.<sup>11</sup> *Bell Atlantic New York 271 Order*, Para. 51.

For all the foregoing reasons, the Commission has jurisdiction over Ameritech Indiana and the authority to act in the subject matter herein.

**2. Background and Nature of Proceeding.** The IURC has begun the initial steps to review Ameritech Indiana's 271 application. The IURC has focused much of its time on third-party testing since it is a key element to any 271 application and the most time-consuming. The IURC approved the parties' recommendation to utilize John Kern to facilitate various collaborative workshops held to develop several of the components of Indiana Bell's 271 application, such as OSS enhancements and upgrades, performance measurements, a master test plan for the third-party OSS test, and a performance assurance plan. On August 29, 2000, the Commission issued an order expressing

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<sup>10</sup> 47 U.S.C. 272(d)(3). See, *Bell Atlantic New York 271 Order*, Para. 51. The *Bell Atlantic New York Order* is particularly important because it is the first instance in which a BOC satisfied the FCC that it complied with Sections 271 and 272. See, also, *SBC Texas 271 Order*, Para. 51.

<sup>11</sup> The FCC is statutorily required to give "substantial weight" to the Attorney General's evaluation; however, this evaluation "shall not have any preclusive effect on any [FCC] determination under [Section 271(d)(3)]." 47 U.S.C. 271(d)(2)(A).

concerns about a number of issues, primarily pertaining to the development of the Indiana Master Test Plan and the scope and methodology of the OSS test. The parties filed several Joint Progress Reports and other joint documents with the Commission setting forth certain agreements regarding upgrades to Ameritech's OSS, products and services Ameritech will offer, the process for revising the interim performance measures approved in Cause No. 41324<sup>12</sup>, the choice of a third-party testing agent, choice of a pseudo-CLEC, the initial master test plan, dispute resolution, and change management and procedural issues, among other things. The Commission approved the parties' recommendation that KPMG be the third-party tester. On March 19, 2001, the Commission issued an order approving (1) the initial Master Test Plan (version 1.0), (2) Statement of Work documents for both KPMG Consulting and the Hewlett-Packard Company, (3) the baseline performance measures<sup>13</sup>, (4) the SBC 13-state OSS interface change management plan for multi-state change management issues, and (5) the expanded role for the IURC staff that the parties had requested in their Corrected Joint Petition of March 14, 2001. The Commission also authorized KPMG Consulting to begin 3<sup>rd</sup> party testing in Indiana in this Order.

Subsequent to March 19, 2001, the Commission has issued additional orders and docket entries regarding performance measures<sup>14</sup> and performance assurance/remedy plan issues.<sup>15</sup> On October 16, 2002, the IURC approved the initial SBC Ameritech Indiana performance assurance and remedy plan.

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<sup>12</sup> Certain initial baseline performance measures for Ameritech Indiana were approved in Cause No. 41324 on February 16, 2000. In our July 10, 2000 docket entry in Cause Nos. 41657 and 41324, we postponed further consideration of Ameritech Indiana's "OSS performance measures and other unresolved OSS issues applicable to Ameritech Indiana" in Cause No. 41324 "to allow time for those issues to be decided in Cause No. 41657 or until further order of the Commission."

<sup>13</sup> The parties to Cause No. 41657 agreed, in collaborative workshops, to a number of modifications to the performance measures that had been developed in Cause No. 41324; they filed a "Joint Petition to Adopt Baseline Performance Measures" in this proceeding on December 27, 2000; a Joint Motion for Expedited Ruling and a "Joint Petition for Approval of Indiana Master Test Plan" on March 12; and a "Corrected Joint Petition for Approval of Master Test Plan on March 14, 2001."

<sup>14</sup> On June 16, 2001, the parties filed a "Corrected Joint Motion for Expedited Amendment of March 19, 2001, Order"; the Commission's June 18 docket entry approved those changes. Additional changes were agreed to in the first six-month review; the parties filed a "Joint Motion for Expedited Amendment of Prior Decisions" on October 10, 2001, seeking approval of certain additional changes agreed to in collaborative discussions – primarily reflecting the implementation of LSOG 4. The Commission approved the changes on January 30, 2002. The Commission is administratively aware that, during the current six-month review, the parties have discussed implementing new performance measures and additional changes to existing measures in the Ameritech region; the parties have not yet filed a Joint Motion or other requests seeking approval of any changes agreed to or otherwise discussed in the 2002 six-month review. Finally, in its October 16, 2002, Order in this Cause, the Commission imposed certain requirements on Ameritech Indiana for existing performance measure MI 15 and for proposed PM 124 and 124.1, which the parties are discussing in the current six-month review. As noted in Appendix 1-A, 1-B, and 1-C to the October 16 Order, this does not preclude additional changes.

<sup>15</sup> Cause No. 41657, Docket Entry (November 9, 2000); Order (Sept. 11, 2001); Docket Entry (July 12, 2002); Docket Entry (August 21, 2002).

3. **“Track A” And “Checklist” Compliance.** Ameritech Indiana seeks interLATA authority under “Track A”<sup>16</sup>, which requires a BOC to have “entered into one or more binding agreements that have been approved under [S]ection 252” “with one or more unaffiliated competing providers of telephone exchange service to residential and business customers”. For the purposes of Track A, the unaffiliated competing providers with whom the BOC has signed the binding agreement(s) may offer telephone exchange service “either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier.” Pursuant to the Track A requirements, such binding agreement(s) must specify “the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities for the network facilities of” the “unaffiliated competing provider[s] of telephone exchange service . . . to residential and business subscribers.”

a. **Ameritech’s Statutory Obligations.** In Cause No. 41657, we are concerned, among other things, with Ameritech Indiana’s compliance with Section 271(c). However, in order to verify compliance with Section 271(c), we must also verify Ameritech Indiana’s compliance with those statutes that are referenced in Section 271(c) – primarily, Sections 251 and 252. Indeed, Sections 271(c)(2)(B)(i), (B)(ii), (B)(xii), (B)(xiii), and (B)(xiv) all explicitly require Ameritech Indiana to comply with at least a portion of Section 251(b), 251(c), and/or 252(d). Section 271(c)(2)(B)(iii) requires Ameritech Indiana to comply with Section 224.

Simplistically, these statutes (Sections 224, 251, 252(d), and 271(c)), as well as certain FCC and IURC orders and rules, require Ameritech Indiana to do three things – it must provide to CLECs certain products and services<sup>17</sup>, under certain terms and conditions, and at certain rates and charges. These three obligations are of great importance to the Commission, the CLECs, the OUCC, and other interested parties. Whether and how Ameritech fulfills its obligations will have a substantial impact on the general state of competition in Ameritech’s service territory in Indiana and on whether we can ultimately support Ameritech Indiana’s Section 271 application to the FCC.

We have addressed Sections 224, 251, and 252(d) in several other proceedings, including Ameritech Indiana’s “TELRIC” proceeding (Cause Nos. 40611 and Cause No. 40611-S1 and Ameritech’s arbitration proceeding with AT&T (Cause No. 40572-INT-03). By virtue of the statutory connection between Sections 271(c) and Sections 224, 251, and 252(d), Congress has effectively created a connection between Cause No. 41657 and Cause Nos. 40611/40611-S1 and 41057-INT-03, among others.<sup>18</sup>

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<sup>16</sup> 47 U.S.C. § 271(C)(1)(A).

<sup>17</sup> The phrase “products and services” is used very broadly, to apply to interconnection and access to UNEs, as well as products and services, more narrowly defined.

<sup>18</sup> The list of other IURC proceedings to which Cause No. 41657 may be linked or related is not meant to be exhaustive.

b. Present vs. Future Compliance. The FCC has previously concluded that a BOC is “providing” a checklist item:

if it actually furnishes the item at rates and on terms and conditions that comply with the Act or, where no competitor is actually using the item, if the BOC makes the checklist item available as both a legal and a practical matter. Like the Department of Justice, we [FCC] emphasize that the mere fact that a BOC has ‘offered’ to provide checklist items will not suffice for a BOC petitioning under Track A to establish Track A compliance. To be providing a checklist item, a BOC must have a concrete and specific legal obligation to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item. Moreover, the petitioning BOC must demonstrate that it is presently ready to furnish each checklist item in the quantities that competitors may reasonably demand and at an acceptable level of quality [emphasis added]. *Ameritech Michigan 271 Order*, Para. 110.

We note that, in the Bell Atlantic New York 271 Order, the FCC stated that the petitioning BOC must demonstrate “that it is currently furnishing, or is ready to furnish, the checklist item in the quantities that competitors may reasonably demand and at an acceptable level of quality.”<sup>19</sup> We also note that, in the Bell South Georgia-Louisiana 271 Order, the FCC emphasized that a BOC seeking 271 authority “must demonstrate that it is offering interconnection and access to network elements on a nondiscriminatory basis” as required under 47 U.S.C. § 271(c)(2)(B)(i) and (ii).<sup>20</sup> We note that many other provisions of the 14-point checklist also prohibit a BOC seeking 271 authority from discriminating against competitors.<sup>21</sup>

Reading these three orders and the applicable statutory requirements together, then, we are required to determine, at a minimum: (1) whether, and to what extent, the interconnection agreement(s) or other procedural vehicle(s) by which Ameritech Indiana proposes to demonstrate its compliance with Track A and the 14-point checklist can properly be said to be “binding”; (2) whether, and to what extent, the interconnection agreement(s) or other procedural vehicle(s) by which Ameritech Indiana proposes to demonstrate its compliance with Track A and the 14-point checklist can properly be said to constitute a “concrete and specific legal obligation to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item”; (3) whether, and to what extent, the “prices and other terms and conditions” of that proposed interconnection agreement(s) or other procedural vehicle(s) may limit or restrict Ameritech Indiana’s ability to be “currently

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<sup>19</sup> *Bell Atlantic New York 271 Order*, Para. 52.

<sup>20</sup> *BellSouth Georgia/Louisiana 271 Order*, Appendix D (“Statutory Requirements”), Paras. 5 & 6, at pp. D-3 & D-4.

<sup>21</sup> *See, e.g.*, 47 U.S.C. § 271(c)(2)(B)(iii), (vii), (x), (xii).



furnishing” or “presently ready to furnish” “each checklist item in the quantities that competitors may reasonably demand and at an acceptable level of quality”; (4) whether, and to what extent, the “prices and other terms and conditions” of that proposed interconnection agreement(s) or other procedural vehicle(s) may limit or restrict CLECs from purchasing and offering any or all checklist items in the quantities that they may reasonably demand and at an acceptable level of quality; and (5) whether, and to what extent, the “prices and other terms and conditions” of that proposed interconnection agreement(s) or other procedural vehicle(s) may be discriminatory. This brief list of evaluation criteria for interconnection agreements is by no means exhaustive and should not be construed as such.

We find that the five minimum requirements set forth in the previous paragraph should also apply if, and to the extent that, Ameritech Indiana proposes to demonstrate compliance with part or all of the 14-point checklist and/or Track A through a tariff or catalog offering, or the IURC requires that a particular product or service be offered in a tariff or catalog. This brief list of evaluation criteria for tariff or catalog offerings is by no means exhaustive and should not be construed as such.

Regardless of which Interconnection Agreement/Amendment or other procedural vehicle is used to demonstrate compliance with Track A and the checklist, we must emphasize that actual performance, not promises of future performance, is necessary for compliance. The FCC has further found that:

a BOC’s promises of *future* performance to address particular concerns raised by commenters have no probative value in demonstrating its *present* compliance with the requirements of section 271.<sup>22</sup> In order to gain in-region, interLATA entry, a BOC must support its application with actual evidence demonstrating its present compliance with the statutory conditions for entry, instead of prospective evidence that is contingent on future behavior. Thus, we must be able to make a determination based on the evidence in the record that a BOC has actually [i.e., already] demonstrated compliance with the requirements of section 271. Changes or upgrades (*e.g.*, development of new processes for providing access to checklist items) that post-date the application will not be relied upon for checklist compliance, but may provide us with further assurances that the applicant will continue to satisfy the conditions of market entry in the future. *SBC Texas 271 Order*, Para. 38

The Ameritech Michigan 271 Order contains similar language:

. . . Paper promises [of compliance with the requirements of Section 271] do not, and cannot, satisfy a BOC’s burden of proof . . . Significantly, the

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<sup>22</sup> See, also, *Bell Atlantic New York 271 Order*, 15 FCC Rcd at 3969, Para. 37; *Ameritech Michigan 271 Order*, 12 FCC Rcd at 20573-74, Para. 55.

timing of a section 271 filing is one that is solely within the applicant's control. We [FCC] therefore expect that, when a BOC files its application, it is already in full compliance with the requirements of section 271 and submits with its application sufficient factual evidence to demonstrate such compliance. Evidence demonstrating that a BOC *intends to come into compliance* with the requirements of section 271 by day 90 is insufficient. *Ameritech Michigan 271 Order*, Para. 55.

This Commission takes a similar position; in order for us to make a positive recommendation to the FCC in support of SBC/Ameritech's 271 application for the state of Indiana, "we must be able to make a determination based on the evidence in the record that [Ameritech Indiana] has actually demonstrated compliance with the requirements of section 271." We, too, are interested in present, actual compliance with Section 271 (and other applicable federal and state statutory, regulatory, and judicial requirements), not merely with paper promises of future compliance. Indeed, it is only present, actual compliance with the applicable federal and state legal requirements that can assure us that the local exchange and advanced services markets in Indiana Bell's service territory are, indeed, "fully and irreversibly open to competition" [emphasis added].<sup>23</sup>

**4. Ameritech's Petition.** It is against this backdrop that we view the Petition of Ameritech Indiana, filed with this Commission in Cause No. 41657 on February 2, 2000, as well as Ameritech Indiana's Phase Two Checklist Informational Filing, filed with this Commission in Cause No. 41657 on September 26, 2002. Ameritech Indiana "petition[ed] the [IURC] to *investigate* and review the various submissions of Ameritech Indiana showing compliance with Section 271(c) of the Telecommunications Act of 1996 in order to allow the Commission to consult with the [FCC] on Ameritech Indiana's compliance" [emphasis added].<sup>24</sup> Ameritech Indiana indicated that it was "filing this Petition to initiate the Commission review of the 271 application Ameritech Indiana intends to file with the FCC at the end of 2000 or the beginning of 2001"<sup>25</sup> and proposed a three-phase process to help facilitate this objective: Phase 1 was to have involved "a regional independent third party test of Operating Support Systems ('OSS'). Phase 2 included "a review of the 14-point Checklist Compliance, including the 'draft application', generic 271 interconnection agreement and performance assurance plan."

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<sup>23</sup> The phrase "fully and irreversibly open to competition" as the DOJ has used it refers to the elimination of barriers to entry and the creation of opportunities to compete; it does not guarantee that Ameritech will face actual, effective, full, or fair competition in any particular geographic or product/service market in Indiana, or that any particular level of competition will be reached or maintained: "This standard ['fully and irreversibly open to competition'] seeks to ensure that the barriers to competition that Congress sought to eliminate in the 1996 Act have in fact been fully eliminated and that there are objective criteria to ensure that competing carriers will continue to have nondiscriminatory access to the facilities and services they will need from the incumbent BOC [emphasis added]." *Evaluation of the US Dept. of Justice, In re: Application of BellSouth Corp., BellSouth Telecom., Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-121 [hereinafter, US DOJ Evaluation, Louisiana II], at x, xi.

<sup>24</sup> Cause No. 41657, Ameritech Petition, introductory (unnumbered) paragraph.

<sup>25</sup> *Id.*, Para. 6, at 3.

Phase 3 would include a review of the “final OSS test report and actual performance results.”

In addition, in its February 2, 2000 Petition, Ameritech Indiana request[ed] that the Commission conduct its investigation into Ameritech Indiana’s submission of evidence in a pre-application draft of full compliance with Section 271(c). Other parties would have 20 days to review and comment on Ameritech Indiana’s submission and Ameritech Indiana would have 20 days thereafter to reply. Additionally, technical conferences could be conducted as necessary. This allows the three phases to run concurrently. Ameritech Indiana also request[ed] “that the Commission engage in the regional OSS testing and accept the report of the independent third party tester into the record in this cause.”<sup>26</sup>

Regarding Ameritech Indiana’s proposed Phase 1, we note that the OSS testing process currently underway is not a regional process, *per se*, although some specific aspects of the OSS test may be at least partially regional in nature.<sup>27</sup> Regarding its proposed Phase 2, Ameritech Indiana filed its initial “draft application” materials with the IURC on September 26, 2002, consisting primarily of a brief and supporting affidavits that it intends to submit to the FCC.<sup>28</sup> We note that SBC/Ameritech filed pre-application draft documents with the other four state commissions in the Ameritech region prior to September 26; except as otherwise stated, those materials purport to demonstrate Ameritech’s compliance with Track A and the 14-point checklist in those states.<sup>29</sup> It is prudent for us to begin developing the processes and procedures necessary for the review of Ameritech Indiana’s information filing and other materials. It will be necessary for us to obtain input from both SBC/Ameritech and other interested parties and entities. We issued our second order regarding performance assurance and remedy plan issues on October 16, 2002; indeed, in that order, we adopted a stand-alone SBC Ameritech Indiana Performance Assurance and Remedy Plan. Regarding the proposed Phase 3, it is premature for us to specify at this time when the OSS test will be considered complete. Therefore, we will provide guidance and instructions at an appropriate time.

**5. Process for Phase 2 of SBC/Ameritech’s 271 Compliance Petition.** There are a number of procedural, administrative, and practical issues related to SBC/Ameritech Indiana’s Section 271 long distance application and local competition that need to be addressed early on. In its September 26, 2002 filing, Ameritech requested that comments on the Petition be filed with the Commission in 30 days and Ameritech would file its

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<sup>26</sup> *Id.*, Para. 7, at 3.

<sup>27</sup> For example, some of the SBC/Ameritech documentation that BearingPoint is reviewing and some of the interviews that BearingPoint is conducting with SBC/Ameritech personnel may apply to more than one of the Ameritech operating companies and more than one regulatory jurisdiction.

<sup>28</sup> Cause No. 41657, “Ameritech Indiana’s Phase Two Informational Checklist Filing” (filed Sept. 26, 2002).

<sup>29</sup> Ameritech filed its initial draft pre-application materials in Michigan on May 15, 2001; in Ohio on August 9, 2001; in Illinois on November 20, 2001; and in Wisconsin on March 19, 2002.

reply 30 days thereafter. The Commission issued a docket entry setting an Attorneys' conference for October 17, 2002 for purposes of discussing an appropriate procedural schedule. The parties presented arguments to the presiding officers on how best to process the Phase 2 petition. After considering all the arguments made, we find the following process appropriate.

The Commission anticipates that the record in this proceeding will be quite voluminous. In order to help the IURC staff, the IURC, and the parties frame and understand the issues, it will be helpful if individual parties cross reference their various filings and submissions, and documents on which they may rely in making their respective assertions. Specifically, we find that parties should prepare and file the following:

Ameritech Indiana shall, by November 18, 2002, file with the IURC a comprehensive, detailed report indicating the arbitration agreement(s), tariff(s), or catalog that it will use to support its Section 271 application and to demonstrate compliance with applicable statutes, FCC and IURC orders and rules, and prior commitments that SBC/Ameritech or Ameritech Indiana has made. This report shall consist of two parts: a short narrative description and an attached Excel spreadsheet containing the Company's detailed responses. The report and the attachment should be posted to the Ameritech271 e-mail distribution list [Ameritech271@urc.state.in.us]. The spreadsheet should contain detailed references to the specific portions of the applicable arbitration agreement(s), and /or catalog or tariff(s), on which Ameritech intends to rely, for relevant individual checklist items (and, if applicable, prior commitments in this proceeding). It should include detailed and precise "cross references" between specific checklist items and specific sections and subsections of any of the following that Ameritech Indiana intends to use, or is required to use, to support its Section 271 filing or related filings, as directed by the IURC, the Presiding Officers, or the IURC Staff: affidavits, arbitration agreement(s), tariff(s), or catalog. The format for the initial response is shown in Attachment A to this Order. After reviewing this information, the IURC, the Presiding Officers, or the IURC Staff may modify the format and/or these procedural requirements, as needed. Ameritech shall maintain a current version of this report and shall submit any updates as directed by the IURC, the Presiding Officers, or the IURC Staff.

Ameritech may also be requested to prepare and submit additional reports, spreadsheets, outlines, etc., to assist the Staff, the Commission, and the parties in organizing analyzing the voluminous filings that are expected. If needed, other parties may also be requested to prepare and submit reports, spreadsheets, outlines, etc., for the same purpose.

Commenting parties should file their replies to Ameritech's September 26, 2002 filing and the November 18, 2002 matrix and serve them on other parties by December 9, 2002, as follows. Comments on any matters related to Ameritech's September 26 assertions regarding prices or costs should be deferred until after the Commission establishes final TELRIC-based rates and charges in Cause No. 40611-S1 and, if applicable, in Cause No. 40611. The Commission will set a specific procedural schedule for further filings to be made in this proceeding related to prices and costs. Ameritech

should file its reply to those December 9, 2002 filings with the Commission and serve on other parties by January 6, 2003. Following the submission of the final vendor report(s) relating to the independent 3<sup>rd</sup> party OSS test, CLECs and the OUCC will be given an opportunity to update their respective responses to the September 26, 2002 filings; Ameritech will be given an opportunity to reply to those updated responses. Additionally, commenting parties are instructed to identify by numeric heading the section of Ameritech's affidavit or other materials to which they are responding, as well as the applicable checklist Item(s). General comments responding to Ameritech's application should precede the specific responses. Commenting parties are also requested to include a header on each page of their respective comments indicating the subject matter addressed on that particular page (e.g., general comments, interconnection, unbundled local loops, etc.). Commenting parties are also instructed to provide the Commission with executive summaries of their comments and reply comments. Neither executive summary shall exceed five pages. Finally, commenting parties are instructed to provide Staff and other parties with an electronic version of their comments and replies simultaneous to the filing of each. The electronic versions of the comments and replies should be in a Microsoft Word format<sup>30</sup> and should be sent electronically to the Ameritech 271 List Serve at [Ameritech271@urc.state.in.us](mailto:Ameritech271@urc.state.in.us). Spreadsheets should be in a Microsoft Excel format<sup>31</sup> and should be sent electronically to the same e-mail address.

It is possible that certain issues raised in other proceedings (even beyond Cause Nos. 40611-S1 or 40611) may have a bearing on our analysis in, or the outcome of, this proceeding. We may issue further procedural instructions in this regard in the future, as needed.

We also find it appropriate to allow discovery in this phase of the 271 process. Discovery should be conducted on an informal basis and the parties should have 10 days to object or respond to any discovery requests. The discovery period should remain open at least until after the IURC has determined that the OSS test is over.

Regarding collaborative workshops, one of the most important components of Bell Atlantic's 271 proceeding for the state of New York was the use of a collaborative process that involved the BOC, interested CLECs, New York Public Service Commission staff, and various other interested parties. Collaborative workshops and technical conferences have been used to address a variety of issues in OSS and 271 proceedings in Indiana and in other Ameritech states over the last two-plus years. Workshops were also used to address many OSS and Section 271 issues in Texas. At the Attorneys' conference, the parties described the collaborative workshops that the Michigan, Ohio and Wisconsin Commissions have utilized, or are utilizing, to address certain Phase 2 issues.

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<sup>30</sup> The IURC currently uses MS Office 2000.

<sup>31</sup> The IURC currently uses MS Office 2000.

The Commission recognizes that there are many contentious issues associated with the typical Section 271 application. At the present time, the Commission does not believe that it would be productive to require collaborative workshops prior to the January 6, 2003 filing requirements. We may decide that it is prudent to explore whether parties can identify and narrow their differences and, if possible, reach agreement on some issues. The use of collaborative workshops, technical conferences, etc., seem well suited to this objective for the state of Indiana. More specifically, we envision workshops that would, in general, assist the Commission, staff and parties in: (1) understanding and framing the issues related to Ameritech's fulfillment of previous commitments or requirements (e.g., commitments or requirements in an interconnection agreement) or of applicable FCC or IURC orders or rules; (2) understanding and framing the issues related to Ameritech's compliance or noncompliance with the 14-point checklist and relevant FCC orders and rules, and applicable IURC orders and rules; and (3) identifying disputed issues. For certain specific issues, workshops and technical conferences may also serve as a forum for parties to attempt to reach agreement regarding Ameritech's fulfillment and compliance and, if and to the extent that agreement is reached, to attempt to recommend solutions (either consensus or otherwise) to resolve some or all of those concerns.

All final reports, reply comments, and other official documents will be submitted to the IURC in electronic format. An electronic copy of each submission must be forwarded to the Commission's 271/OSS e-mail list at [Ameritech271@urc.state.in.us](mailto:Ameritech271@urc.state.in.us); and electronic service must be made on the individuals included on the service list in this cause. All official submissions will be posted on the IURC's web site. To the extent a party(ies) or Mr. Kern is requesting that the full Commission take action on a particular recommendation or request, the applicable original report(s) or other document(s) and 13 copies should be officially filed with the Commission.

**6. Burden Of Proof.** As the FCC has noted, SBC/Ameritech Indiana "retains at all times the ultimate burden of proof that its application satisfies all of the requirements of section 271, even if no party files comments challenging its compliance with a particular requirement [emphasis added]."<sup>32</sup> This is true, regardless of the specific filing procedures we may establish in this proceeding – i.e., SBC/Ameritech Indiana retains the ultimate burden of proof regardless of whether the Commission develops a record through collaboration or litigation, regardless of whether this proceeding(s) is (are) styled as a docketed proceeding initiated by Ameritech or as a Commission investigation; and regardless of whether we request simultaneous filings from the parties or allow Ameritech to file the final round of rebuttal, reply, or responsive filings.

**7. IURC Final Report/Recommendation.** Once the OSS third-party testing and our review of both testing and non-testing issues are complete, the IURC will submit a report to the FCC. The report, as well as any supporting or additional documentation, will provide the IURC's recommendations concerning Ameritech Indiana's compliance

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<sup>32</sup> *SBC Texas Order*, Para. 47; *Bell Atlantic New York Order*, Para. 47; *SWBT Kansas/Oklahoma Order*, Para. 29; *SBC, et al., Ameritech Michigan 271 Order*, Para. 13, 14 & n 26

or non-compliance with Sections 271 and 272 of TA-96, as well as other related statutes and applicable FCC and IURC Orders and rules.

However, for the purposes of this procedural order, the IURC finds it premature to develop guidelines for submitting our ultimate recommendations to the FCC. Given the endorsement of all parties to this proceeding, including Ameritech Indiana, of a "military-style" test of Ameritech's OSS using a "test until pass" approach<sup>33</sup>, and this Commission's subsequent endorsement of the military style/test-until-you pass approach<sup>34</sup>, and given the number and magnitude of the problems that have been uncovered to date in that test, we do not know when this proceeding—particularly third-party testing of Ameritech Indiana's OSS--will be complete. Furthermore, there may be developments in other states that may need to be considered.

**IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:**

1. The Findings and Procedures as set forth herein are hereby approved.
2. This Order shall be effective on and after the date of its approval.

**McCARTY, HADLEY, RIPLEY AND SWANSON-HULL CONCUR:**

**ZIEGNER ABSENT:**

**APPROVED:**

**OCT 31 2002**

I hereby certify that the above is a true and correct copy of the Order as approved.

  
Nancy E. Manley  
Secretary to the Commission

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<sup>33</sup> Indiana Utility Regulatory Commission: Ameritech OSS Evaluation Project Master Test Plan, Version 1.0, Sect. II.G. (submitted by KPMG Consulting, Inc., on March 9, 2001); Joint Motion for Expedited Ruling, 2 (filed March 12, 2001); Corrected Joint Petition for Approval of Master Test Plan, Section I. "Introduction and Summary of Requests", at 2; Section II. (filed March 14, 2001).

<sup>34</sup> IURC 2002 Report to the Regulatory Flexibility Committee, Sect. 3.0, p.22.

AIT - Affidavit\_\_Page 1 of 2



Checklist-to-Affidavit  
Revision Date: \_\_\_\_\_  
Version No.: \_\_\_\_\_

AIT - Affidavit\_\_Page 2 of 2

Cause No. 41657 - IURC Checklist Compliance Review

Ameritech Indiana: Checklist - Interconnection Agreement Cross Reference Matrix

Version No.:

EXAMPLE:									
1.	271(c)(2)(B)(i)	Interconnection	251(c)(2); 252(d)(1)	AT&T/TCG 40571-INT-03	##/##/02	##	##.##	Comments	
Interconnection Agreement									
(Must populate completely.)									
			Reference						
					Effective		Paragraph		
					Date		Cause No.		Comments
			Statutory		Signatory		Cause No.		Comments
			Cross Reference		CLEC(s)		Cause No.		Comments
1.	271(c)(2)(B)(i)	Interconnection	251(c)(2); 252(d)(1)						
2.	271(c)(2)(B)(ii)	Nondiscrim. Access to: Network Elements	251(c)(3); 252(d)(1)						
3.	271(c)(2)(B)(iii)	Poles, Ducts, Conduits, & Rights of Way	224						
4.	271(c)(2)(B)(iv)	UNE Local Loops	N/A						
5.	271(c)(2)(B)(v)	UNE Local Transport	N/A						

Checklist-to-Int. Agreement  
Revision Date: \_\_\_\_\_  
Version No.: \_\_\_\_\_

AIT - IA\_\_Page 2 of 2

Cause No. 41657 - IURC Checklist Compliance Review											
Ameritech Indiana: Checklist - Tariff Cross Reference Matrix											
Version No.:											
EXAMPLE:											
1.	271(c)(2)(B)(i)	Interconnection	251(c)(2); 252(d)(1)	##	##	##	##/##/02	4####	##/##/02	Para. 3., p. 5	Comments ...

Checklist-to-Tariff  
Revision Date: \_\_\_\_\_  
Version No.: \_\_\_\_\_

AIT - Tariff\_\_Page 2 of 2

Cause No. 41657 - IURC Checklist Compliance Review  
Ameritech Indiana: Checklist - Catalog Cross Reference Matrix

EXAMPLE:

1.	271(c)(2)B(i)	Interconnection	251(c)(2); 252(d)(1)	##	##	##	##/02	4###	##/02	Para. 3., p. 5	Comments

Catalog

(Must populate completely.)

Applicable IURC Proceeding (if any)

Statutory

Sheet

Order/D.E. Order/D.E.

Checklist Item  
1. 271(c)(2)B(i) Interconnection

Cross Reference  
251(c)(2); 252(d)(1)

# # # # # Eff. Date

Cause No. Date

Reference

AIT - Catalog\_\_Page 2 of 2